



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201317024

FEB 01 2013

Uniform Issue List: 408.03-00

T:EP:RA:1

LEGEND:

Taxpayer A =

IRA B =

Individual C=

Financial Institution D=

Financial Institution E =

Account F=

Account G=

Financial Institution H=

IRA I=

Amount 1 =

Dear :

This is in response to a request for a letter ruling dated May 30, 2012, as modified and supplemented by additional correspondence dated September 5, 2012, November 21, 2012, November 27, 2012, and December 14, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution totaling Amount 1 from IRA B, an individual retirement annuity under section 408(b) of the Code. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to misleading information from, and errors made by, her insurance representative, on whom she was relying to complete the transaction. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A represents that her insurance representative, Individual C, approached her in August 2009 and persuaded her to cash-out IRA B maintained with Financial Institution D. He recommended that she fund a new IRA by purchasing an annuity with a new insurance company, Financial Institution E. At the time, Individual C was in the process of applying for a license to do business on behalf of Financial Institution E.

Taxpayer A represents that she received a distribution of Amount 1 from Financial Institution D dated September , 20 . Taxpayer A called Individual C on or about September 10, 2009, to check on the status of the new account with Financial Institution E. Individual C told her that she had plenty of time to transfer Amount 1 to another account and that he would "take care of it," but that he had to tend to urgent business out of state. Thereafter, Taxpayer A tried unsuccessfully to speak with Individual C on several occasions.

In the last week of October 2009, Individual C delivered paperwork to Taxpayer A to open a new IRA with Financial Institution E. Taxpayer A gave Individual C a voided check to complete an electronic transfer of Amount 1 to Financial Institution E. Several days later, in early November 2009, Individual C directed Taxpayer A to deposit Amount 1 into checking Account F, because he had opened an IRA with Financial Institution E. Taxpayer A deposited Amount 1 into Account F on November , 20 . A few days later, Taxpayer A accessed checking Account F to confirm that Individual C had transferred Amount 1 from Account F to Financial Institution E as directed. She then discovered that Amount 1 was still in Account F, and Individual C had not transferred Amount 1 to Financial Institution E. Taxpayer A attempted unsuccessfully to speak with Individual C on several occasions thereafter.

Individual C finally called Taxpayer A on December , 20 , and he told her that the reason he failed to transfer Amount 1 from Account F to Financial Institution E was because his license with Financial Institution E had expired and that he had to try to open a new IRA account on behalf of Taxpayer A with another company. In fact, on November , 20 , Financial Institution E had notified Individual C that it refused to grant him a license to contract with Financial Institution E, because he had failed Financial Institution E's background investigation. (Individual C eventually provided Taxpayer A with a copy of the letter on May , 20 , after Taxpayer A made several queries as to why Amount 1 was not transferred to Financial Institution E within the required time period).

During the same call on December , 20 , Individual C assured Taxpayer A that she still had time to complete the rollover transaction, and he directed her to transfer Amount 1 from checking Account F to savings Account G until he was able to open a new IRA. Per Individual C's recommendation, Taxpayer A transferred Amount 1 to savings Account G on December , 2009. On December , 20 , Individual C prepared an annuity application with Financial Institution H, and on December 20, 2009, Amount 1 was used to purchase IRA I, an individual retirement annuity under section 408(b) of the Code, from Financial Institution H.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement under section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that the failure to accomplish a timely rollover of Amount 1 was due to the misleading information and errors made by Individual C, on whom Taxpayer A was relying to complete the transaction.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, were met with respect to the contribution of Amount 1 to IRA I on December 20, 2009, such contribution is considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

201317024

If you have any questions, please contact _____ (I.D. # _____) by phone
at _____ or fax at _____. Please address all correspondence to
SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose